

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

**FILED**

**MAY 10 2016**

Clerk, U S District Court  
District Of Montana  
Missoula

HARLEY HOWARD,

Petitioner,

vs.

LERROY KIRKEGARD, WARDEN;  
ATTORNEY GENERAL OF THE  
STATE OF MONTANA,

Respondents.

CV 16-25-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on April 7, 2016, recommending dismissal of this case due to Petitioner Harley Howard's ("Howard") failure to file his petition for writ of habeas corpus. Howard failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v.*

*Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that this matter should be dismissed because Howard has failed to present a "case or controversy" pursuant to Article III, Section 2, of the United States Constitution.

Accordingly, IT IS ORDERED that:

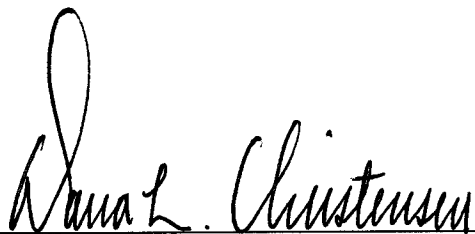
(1) Judge Johnston's Findings and Recommendations (Doc. 3) are ADOPTED IN FULL.

(2) Howard's Request for Extension (Doc. 1) is DENIED and the matter is DISMISSED without prejudice.

(3) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

(4) A certificate of appealability is DENIED.

Dated this 10<sup>th</sup> day of May, 2016.

  
Dana L. Christensen, Chief Judge  
United States District Court